

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Require
California Natural Gas and Electric Utilities to
Preserve Interstate Pipeline Capacity to
California.

Rulemaking 02-06-041
(Filed June 27, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING SCHEDULING
LIMITED REHEARING OF DECISION 02-07-037**

Summary

On April 17, 2003, the Commission issued Decision (D.) 03-04-061 granting limited rehearing of D.02-07-037, a decision that established rules for California natural gas utilities and the state's largest electric utilities concerning subscription to turned back capacity on the El Paso Natural Gas Company (El Paso) interstate pipeline. The rehearing order is limited to the issue of pre-authorization for recovery of costs by Pacific Gas and Electric Company (PG&E) for existing interstate pipeline capacity rights on Transwestern Pipeline Company's (Transwestern) pipeline. An expeditious schedule for briefing and hearing on PG&E's cost recovery for Transwestern capacity will be established at the hearings scheduled for the week of April 28, 2003.

Background

On July 27, 2002, the Commission issued D.02-07-037, a decision established rules for subscription of capacity on El Paso's pipeline and also authorized full recovery for existing interstate pipeline capacity rights for the gas

utilities. The Utility Reform Network (TURN) filed an application for rehearing of D.02-07-037 alleging that the portion of the decision pre-authorizing recovery by the utilities for existing capacity rights violates Sections 451, 1708 and 1757.1 of the Public Utilities Code¹ and unlawfully revises D.95-12-046 with respect to PG&E's Transwestern pipeline capacity rights. In D.03-04-061, the Commission agreed with TURN regarding the procedures required under Section 1708 and granted limited rehearing of D.02-07-037 with respect to the full authorization of PG&E's full recovery of its costs for its existing interstate pipeline capacity.

When the Commission adopted the rules concerning turned back capacity on the El Paso interstate gas pipeline, it was done on an expedited schedule. The Order Initiating Rulemaking (OIR) issued June 27, 2002, was in response to a May 31, 2002, Federal Energy Regulatory Commission (FERC) order authorizing marketers currently serving California to turn back up to 725 million cubic feet per day (MMcf/d) of firm capacity on the El Paso pipeline with primary delivery points at the California border to El Paso's East of California customers.² As a result of the May 31 Order, unless California replacement shippers or utilities acquired the turned back capacity, it might have been permanently lost from California. Therefore, the OIR presented two new rules; the first rule proposed requiring the natural gas and large electric utilities to each sign up for a proportional amount of the turned back capacity not subscribed to by replacement shippers serving California, and the second rule proposed finding

¹ Unless otherwise indicated, all citations to sections refer to the Public Utilities Code and citations to rules refer to the Commission Rules of Practice and Procedure, codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

² 99 FERC 61, 244.

just and reasonable and pre-approving the California utilities' subscription to the turned back capacity.

After reviewing the comments and reply comments, on July 17, 2002, the Commission issued D.02-07-037 establishing the rules as proposed, with an addition that the utilities existing capacity rights on interstate pipelines is found to be just and reasonable. TURN focused on this part of the decision in its application for rehearing, and in particular honed in on the effects of its application to PG&E's recovery for its Transwestern capacity.

Application for Rehearing

D.03-04-061 describes in detail TURN's legal arguments, and the Commission's analysis. In summary, TURN demonstrated legal error in D.02-07-037. To begin, the Commission issued D.95-12-046 (Application 93-04-011) in which the Commission denied PG&E recovery of its Transwestern costs in 1992 and in all future years, absent certain information. TURN argued in its petition for rehearing that PG&E had used the El Paso rulemaking to evade the results of D.95-12-046, and that those activities violated Section 1708. D.02-07-037 modified D.95-12-046 by finding just and reasonable the California utilities' existing capacity rights on interstate pipelines—that by application includes PG&E's Transwestern capacity. However, there is no evidence on the record in R.02-06-041 that the requirements of Section 1708 concerning notice and hearing before the Commission changes a prior decision were met. In particular, the OIR did not mention the Transwestern capacity costs or other existing capacity costs, and did not reference D.95-12-046.

The Commission found that TURN's allegations, that concern the procedural requirements that must be followed for PG&E's full recovery of

Transwestern capacity costs, have merit. Therefore, a limited rehearing is granted and shall be held in Phase II of this proceeding.

Briefing and Hearing Schedule

Evidentiary hearings in Phase II of this proceeding are scheduled for the week of April 28, 2003. At the start of the hearing on Monday, April 28, 2003, the parties will be directed to meet and confer on a procedural schedule that includes a filing by PG&E on the requirements set forth in D.95-12-046 for the full recovery of its Transwestern capacity costs, and/or briefing on whether the Commission should modify that decision; responsive filings by interested parties and intervenors; concurrent reply filings; and a hearing schedule. The schedule should be as expeditious as possible.

IT IS RULED that:

1. The limited rehearing on the issue of pre-authorization for recovery of costs for PG&E's existing pipeline capacity rights on Transwestern will be addressed in Phase II of this proceeding.
2. A procedural schedule for filings and evidentiary hearing will be established at the evidentiary hearing scheduled for the week of April 28, 2003.

Dated April 28, 2003, at San Francisco, California.

/s/ ANGELA K. MINKIN for
Carol A. Brown
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Scheduling Limited Rehearing of Decision 02-07-037 on all parties of record in this proceeding or their attorneys of record.

Dated April 28, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.